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Forests

How the conservation potential of FRA has been wilfully undermined

The environment ministry hasn't quite understood and accepted the FRA nor has it shown the required urgency to formulate plans for establishing critical wildlife habitats, which are consistent with the FRA's provisions

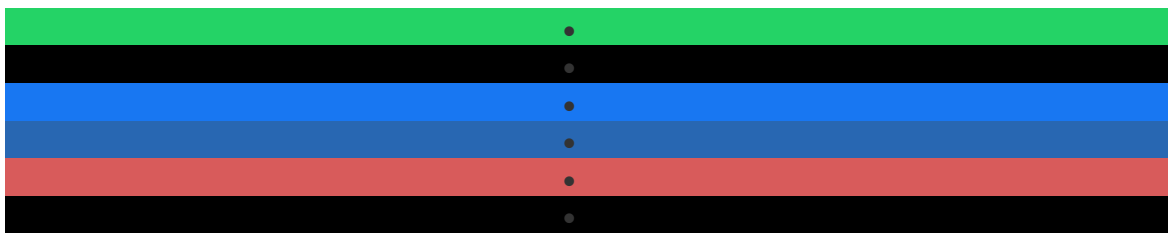


Baiga adivasis on a protest walk. Photo: Wikimedia Commons

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It is remarkable and unfortunately totally under-appreciated that some of the strongest conservation provisions currently in the Indian Constitution are in a social welfare legislation, the Forest Rights Act (FRA) or to give its official title, The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

I specifically refer to 'Critical Wildlife Habitat' or CWH, which is defined in Section 2(b) of the Act quoted below:

"Critical wildlife habitat means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of

wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4."

[The Act then lays out in Section 4\(2\)](#), the approach to be adopted which requires forest rights to be first recognised and vested in all eligible claimants in all forests, including all categories of Protected Areas (PAs).

There is an objective demonstration that the presence of forest dwellers and their activities would cause irreversible damage and threaten the target species and options including co-existence have been explored and found to be impractical.

Then the process for either modification of the granted rights and/or relocation and resettlement of the forest dwellers is described which requires free and informed consent of the Gram Sabhas to the proposed resettlement.

What I consider the strongest conservation provision is at the end of Section 4(2), which states that CWH once established **cannot be subsequently diverted for any other use by any entity**.

Compare this with what is seen as the strongest provision in a conservation legislation, the establishment of Tiger Reserves under the Wild Life Protection Act (WLPA). The WLPA's Section 38W(2) states and I quote, "No state government shall de-notify a tiger reserve, except in public interest, with the approval of the Tiger Conservation Authority and the National Board for Wild Life."

To me, the contrast is stark. Once a CWH is established by following due process, it cannot be diverted for any other use while even a Tiger Reserve can be de-notified in public interest and we are all aware of how public interest is defined in practice.

Given the legal strength of CWH, it would only be normal for us to expect that by now, numerous CWHs would have been established, as more than ten years have passed since the FRA became the law of the land.

It is tragic that till date, not a single CWH has been established. Instead, ill-informed, motivated, baseless and scare-mongering criticisms painting doomsday scenarios have been unleashed on FRA as a whole including legal challenges. Therein hangs a tale!

A mess created

FRA gives the Union Ministry of Environment, Forest and Climate Change (MoEF&CC) the lead role in preparing the guidelines for establishing CWHs. The MoEF&CC has failed miserably in delivering on this mandate.

In fact, the MoEF&CC and especially the National Tiger Conservation Authority have repeatedly and erroneously stated that the FRA does not apply within PAs, especially in Tiger Reserves, touting the Critical Tiger Habitat provision in the WLPA as overriding the CWH.

This is completely in contradiction to the provisions enshrined in both, WLPA and FRA, which unambiguously state that to begin with, rights have to be recognised and vested with all eligible claimants across all forest lands without any exception. Other actions can only follow the establishment and vesting of rights.

The MoEF&CC issued the first set of CWH guidelines in October 2007, even before FRA became the law of the land! These guidelines were both, bad in intent and in law and also very impractical. For example, it recommended the use of Species Area Curves to identify CWHs.

These guidelines were widely criticised and opposed. The MoEF&CC then undertook some consultations and issued a revised draft of CWH guidelines in February 2011.

This outlined a more practical approach, which was not very prescriptive. It also very clearly states that CWHs need not be entire PAs which they weren't meant to be. Let us not forget that in India, nature and wildlife are not restricted to PAs and in fact, significant populations of many endangered species either live exclusively outside PAs or are very dependent on habitats outside PAs to survive and thrive.

It is the overall attitude of local communities which includes aspects of co-existence, acceptance, reverence, tolerance and often active conservation to varying degrees that has enabled India to do such a good job of conservation despite the huge challenges it faces as a nation.

The extensive network of community managed forests and other habitats as well as the community conserved areas in India are a testament to the conservation ethos and contributions of local communities.

In fact, the recognition of Community Forest Rights both inside and outside PAs will create a continuum of conservation efforts rooted in the local community and strengthen community conservation initiatives.

For reasons which are not very clear, the 2011 guidelines were never finalised.

In January 2018, in what can only be described as a somewhat secretive manner, MoEF&CC issued the next set of CWH guidelines to all the state governments without even consulting the Union Ministry of Tribal Affairs, the nodal ministry for FRA, forget giving any opportunity for a public review and debate.

The cover letter from the Deputy Inspector General of Forests (Wildlife) asks the state governments to take further action, as appropriate, in accordance with the provisions of the FRA.

The 2018 guidelines differs significantly from the process described in the FRA which is the core legislation for which these are only guidelines and hence have to be totally consistent with the law.

These guidelines undermine the role of the Gram Sabha. The FRA asks for consultations with each Gram Sabha and their consent while these guidelines talk about public hearings in some close-by location. These also do not specify as to what would happen to the opinions expressed in these public hearings.

The 2018 guidelines need to be withdrawn and revised as they are inconsistent and conflicting with the FRA. In the meantime, it should be made explicitly clear that CWH should not become co-terminus with "relocation".

In fact, developing co-existence strategies based on Section 5 and Rule 4 (1) e & f of FRA, should be an important and integral part of identification and governance of CWH. The plans thus prepared by the Gram Sabhas after such consultations would reflect any modifications of the rights, regulations, and no go zones, if any.

The whole concept of inviolate is a bit of a myth especially in times when the effects of climate change are all pervasive. It is very unfortunate that Central and state government agencies have continued to relocate forest dwellers without vesting them with rights as mandated by FRA especially from PAs. This is completely unacceptable and has to stop forthwith.

What becomes clear from this more than a decade-long history is that the MoEF&CC hasn't quite understood and accepted the FRA and the role envisaged for it nor has it shown the required openness and urgency to formulate plans for establishing CWHs which are consistent with the provisions of the FRA.

This, in many ways, is a tremendous loss of an opportunity for the MoEF&CC to redefine itself which will make it more relevant and effective especially in the context of more inclusive, participatory, democratic and just approaches and models of conservation.

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